

Reporting & Investigation of Suspected Abuse & Neglect

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Part I — Introduction to Michigan’s Child Protection Law

2.1 Scope Note

This chapter covers reporting and investigating suspected child abuse or neglect under the Child Protection Law, MCL 722.621 et seq.; MSA 25.248(1) et seq., and filing petitions for court jurisdiction concerning that abuse or neglect under the Juvenile Code, MCL 712A.1 et seq.; MSA 27.3178(598.1) et seq. In addition, the chapter contains information on the use of confidential records to assist in investigations of suspected child abuse and neglect.

The definitions of “abuse” and “neglect” under the Child Protection Law are much broader than the statutory bases for Family Division jurisdiction in child protective proceedings contained in the Juvenile Code.* These broad definitions and the mandatory reporting requirements reflect the basic purpose of child protective proceedings, which is to protect children and prevent abuse or neglect, rather than to punish abusive or neglectful adults. See, generally, *People v Gates*, 434 Mich 146, 161–62 (1990) (protective proceedings distinguished from criminal proceedings).

The Child Protection Law has survived overbreadth and vagueness challenges. See *People v Cavaiani*, 172 Mich App 706, 711–15 (1988).

2.2 Definitions Under the Child Protection Law

The Child Protection Law, MCL 722.621 et seq.; MSA 25.248(1) et seq., governs reporting and investigation of suspected child abuse and neglect, and provides for or requires the filing of petitions to initiate child protective proceedings under the Juvenile Code, MCL 712A.1 et seq.; MSA 27.3178(598.1) et seq. The following definitions apply to the investigation and reporting stage of child protective proceedings.

*See Section 3.4 for a discussion of these statutory bases.

A. “Child Abuse”

Under the Child Protection Law, “child abuse” is defined as harm or threatened harm to a child’s health or welfare by a parent, legal guardian, or any other person responsible for the child’s health or welfare, or by a teacher or teacher’s aide, that occurs through nonaccidental physical or mental injury, sexual abuse, sexual exploitation, or maltreatment. MCL 722.622(e); MSA 25.248(2)(e). A “child” is a person under age 18. MCL 722.622(d); MSA 25.248(2)(d).

“Sexual abuse” is defined as engaging in “sexual contact or sexual penetration” as those terms are defined in §520a of the Penal Code:

- F “Sexual contact” means the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.
- F “Sexual penetration” means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body, but emission of semen is not required.

MCL 722.622(q); MSA 25.248(2)(q), and MCL 750.520a(k) and (l); MSA 28.788(1)(k) and (l).

“Sexual exploitation” includes allowing, permitting, or encouraging a child to engage in prostitution, or allowing, permitting, encouraging, or engaging in the photographing, filming, or depicting of a child engaged in sexual intercourse, erotic fondling, sadomasochistic abuse, masturbation, passive sexual involvement, sexual excitement, or erotic nudity. MCL 722.622(r); MSA 25.248(2)(r), and MCL 750.145c(e); MSA 28.342a(e).

Note 1: For information on investigating physical and sexual abuse, see Farley & Reece, *Recognizing When a Child’s Injury or Illness Is Caused by Abuse: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997); Parrish, *Battered Child Syndrome: Investigating Physical Abuse and Homicide: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997); Lanning & Farley, *Understanding and Investigating Child Sexual Exploitation: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997); and Cage & Pence, *Criminal Investigation of Child Sexual Abuse: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997).

B. "Child Neglect"

"Child neglect" is defined as harm or threatened harm to a child's health or welfare by a parent, legal guardian, or any other person responsible for the child's health or welfare that occurs through either:

- F negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care, or
- F placing a child at an unreasonable risk to the child's health or welfare by the failure of the parent, legal guardian, or any other person responsible for the child's health or welfare to intervene to eliminate that risk when that person is able to do so and has, or should have, knowledge of the risk.

MCL 722.622(f); MSA 25.248(2)(f). A "child" is a person under age 18. MCL 722.622(d); MSA 25.248(2)(d).

Note 2: For a concise guide to the investigation of child neglect cases, see Rosenberg, *Child Neglect and Munchausen Syndrome by Proxy: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997).

C. "Person Responsible for the Child's Health or Welfare"

"Person responsible for the child's health or welfare" means the following:

- F a parent;
- F a legal guardian;
- F a person 18 years of age or older who resides for any length of time in the same home in which the child resides, or, except when used in MCL 722.627(2)(e); MSA 25.248(7)(2)(e), or MCL 722.628(8); MSA 25.248(8)(8),* "a nonparent adult"; or
- F an owner, operator, volunteer, or employee of a licensed or unlicensed child care organization as defined in MCL 722.111; MSA 25.358(11), or a licensed or unlicensed adult foster care family or small group home as defined in MCL 400.703; MSA 16.610(53), of the Adult Foster Care Facility Licensing Act.

MCL 722.622(o)(i)–(ii); MSA 25.248(2)(o)(i)–(ii).

*These exceptions limit a "nonparent adult's" access to information on the FIA's central registry and absolve the FIA from contacting a "nonparent adult" after interviewing the child at a school or other institution.

A “nonparent adult”^{*} is a person 18 years old or older who, regardless of the person’s domicile, meets all of the following criteria in relation to a child over whom the court takes jurisdiction under MCL 712A.2(b); MSA 27.3178(598.2)(b):

- F the person has substantial and regular contact with the child;
- F the person has a close personal relationship with the child’s parent or with a “person responsible for the child’s health or welfare”; and
- F the person is not the child’s parent or a person otherwise related to the child by blood or affinity to the third degree.

MCL 722.622(n)(i)–(iii); MSA 25.248(2)(n)(i)–(iii).

Note 3: The provisions defining “nonparent adult” and placing such persons within the definition of “person responsible for the child’s health or welfare” are effective July 1, 1999. See 1998 PA 531.

Such persons or organizations may be subject to the loss of parental or custodial rights over the child if the abuse or neglect is “substantiated.” If the person suspected of abuse or neglect is not “responsible for the child’s health or welfare,” the FIA may be required to notify the prosecutor for investigation of possible criminal violations.*

2.3 Types of Physical and Mental Injuries Covered by the Child Protection Law

The Child Protection Law defines child abuse to include harm or threatened harm to a child that occurs through “nonaccidental physical or mental injury.” MCL 722.622(e); MSA 25.248(2)(e). The terms “physical or mental injury” are not defined in the Child Protection Law.

The Court of Appeals has held that the definitions of “abuse” and “neglect” in the Child Protection Law should be construed to exclude harms not expressly listed in those definitions. *Mich Ass’n of Intermediate Special Educ Administrators v Dep’t of Social Services*, 207 Mich App 491, 497-98 (1994). Thus, the Court refused to give the term “mental injury” in the definition of “child abuse” an expansive reading to include a parent’s refusal to follow the educational recommendations of a school district. *Id.*, at 498.

2.4 Religious Exemptions Under the Child Protection Law

MCL 722.634; MSA 25.248(14), states that a parent or guardian legitimately practicing his religious beliefs who thereby does not provide specified medical treatment for a child, for that reason alone shall not be considered a negligent parent or guardian. Thus, it appears that failure to provide medical treatment on legitimate religious grounds does not constitute “negligent treatment” or “neglect” under the Child Protection Law. See also MCL

*See also Sections 7.23 (orders affecting “nonparent adults”), 13.21 (ordering “nonparent adult’s” compliance with Case Service Plan), and 16.11 (notice requirements).

*See Sections 2.21, Note (definition of “substantiation”), and 2.10–2.12 (cooperation between FIA and law enforcement agencies), below.

*See Benchnote 1 for a discussion of ordering medical treatment of a child over the religious objections of a parent.

*See Section 2.8, below, for discussion of “reasonable cause to suspect.”

722.127; MSA 25.358(27) (Family Independence Agency rules governing child care organizations may not authorize or require medical examination, immunization, or treatment of any child whose parent objects on religious grounds).

However, MCL 722.634; MSA 25.248(14), does not preclude a court from ordering medical or nonmedical remedial services recognized by state law for a child whose health requires it, nor does it abrogate the responsibility of persons required to report suspected abuse or neglect.*

Part II — Reporting and Investigation Requirements

2.5 Persons Required to Report Suspected Abuse or Neglect

If a person listed below has “reasonable cause to suspect”* that a child is being abused or neglected, he or she must report or cause to be reported to the Family Independence Agency the suspected abuse or neglect. These “mandatory reporters” are:

- F physicians;
- F coroners;
- F dentists;
- F registered dental hygienists;
- F medical examiners;
- F nurses;
- F persons licensed to provide emergency medical care;
- F audiologists;
- F psychologists;
- F marriage and family therapists;
- F licensed professional counselors;
- F certified social workers;
- F social workers;
- F social work technicians;
- F school administrators;
- F school counselors or teachers;
- F law enforcement officers; and
- F regulated child care providers.

MCL 722.623(1); MSA 25.248(3)(1). See also MCL 750.411; MSA 28.643 (hospitals, pharmacies, and physicians must report injuries caused by violence or a weapon to local law enforcement officer), and MCL

330.1707(5); MSA 14.800(707)(5) (mental health professional must report suspected abuse or neglect as required by MCL 722.623; MSA 25.248(3)).

MCL 722.633(2); MSA 25.248(13)(2), provides that a mandatory reporter who knowingly fails to report a suspected case of abuse or neglect shall be guilty of a misdemeanor punishable by up to 93 days in jail. For a case involving the prosecution of a mandatory reporter for knowingly failing to report, see *People v Cavaiani*, 172 Mich App 706, 710–11 (1988), discussed in Section 2.8, below.

However, it should be emphasized that the Child Protection Law does not prohibit persons not listed above from reporting suspected abuse or neglect to law enforcement officials or the court. See MCL 722.632; MSA 25.248(12).

The Family Independence Agency must notify the above-listed “mandatory reporters” upon completion of an investigation of the report. See MCL 722.628(13)(a)–(c) and (14); MSA 25.248(8)(13)(a)–(c) and (14).

2.6 Reports by “Non-Mandatory” Reporters of Suspected Abuse or Neglect

In addition to the mandatory reporters listed in Section 2.5, immediately above, any person (usually a friend, neighbor, or relative), including a child, who has reasonable cause to suspect child abuse or neglect may report the matter to the Family Independence Agency or a law enforcement agency. MCL 722.624; MSA 25.248(4). See also MCL 722.632; MSA 25.248(12) (Child Protection Law does not prohibit any person from reporting suspected abuse or neglect to law enforcement officials or the court).

2.7 Child Abuse Reports by Judges Under the Parental Rights Restoration Act

The Parental Rights Restoration Act provides that abortions may not be performed on minors without first obtaining the written consent of the minor and one of the parents or legal guardians of the minor. MCL 722.903(1); MSA 25.248(103)(1). If the parent or legal guardian is not available or refuses to give his or her consent, or if the minor elects not to seek the consent of a parent or legal guardian, the minor may petition the Family Division of the Circuit Court for a waiver of the parental consent requirement. MCL 722.903(2); MSA 25.248(103)(2).

The Parental Rights Restoration Act requires judges to report all instances of suspected sexual abuse, and permits judges to report all instances of suspected child abuse.

A. When Minor Reveals That She Is Victim of Sexual Abuse

Where a person under age 18 seeking waiver of parental consent for abortion reveals to the court that she is the victim of sexual abuse, and that her pregnancy is, or may be, the result of the sexual abuse, the court must immediately:

(a) report the suspected abuse to the Family Independence Agency as required under the Child Protection Law;

(b) inform the minor that there are laws designed to protect her, including the provisions of the Juvenile Code that provide that:

*See Section 4.1.

(i) a law enforcement officer may without court order take her into temporary protective custody if, after investigation, the officer has reasonable grounds to conclude that the minor's health, safety, or welfare would be endangered by leaving her in the custody of her parent or legal guardian;*

*See Sections 6.11–6.15.

(ii) the Family Division may, upon learning of the suspected sexual abuse, immediately hold a preliminary inquiry to determine whether a petition for court jurisdiction should be filed or other action should be taken;*

*See Sections 2.27, below, and 7.10.

(iii) the Family Division must appoint an attorney to represent the minor in protective proceedings;* and

*See Chapter 8.

(iv) after a petition has been filed, the Family Division may order that the minor be placed with someone other than her parent or legal guardian pending trial or further court order if such a placement is necessary to avoid substantial risk to the minor's life, physical health, or mental well-being.*

MCL 722.904(6)(a)–(b); MSA 25.248(104)(6)(a)–(b).

B. When Judge Suspects That Minor Is Victim of Child Abuse

*See Section 2.6, above.

Proceedings under the Parental Rights Restoration Act are to be completed with confidentiality. MCL 722.904(2); MSA 25.248(104)(2). However, notwithstanding these confidentiality requirements, a Family Division judge is permitted (as a “non-mandatory” reporter) to report all instances of suspected child abuse. MCL 722.904(5); MSA 25.248(104)(5).*

2.8 “Reasonable Cause to Suspect” Abuse or Neglect

In *People v Cavaiani*, 172 Mich App 706 (1988), the Court of Appeals helped to define the standard of suspicion necessary to trigger the reporting requirements of the Child Protection Law. In *Cavaiani*, a child-patient of the defendant-psychologist told defendant that her father had fondled her breasts. Defendant failed to report the alleged abuse and was prosecuted for

this failure. The circuit court dismissed the case and held that the phrase “reasonable cause to suspect” abuse or neglect did not give fair notice of what conduct is required by the statute and thus rendered the Child Protection Law “void for vagueness.” The Court of Appeals granted the prosecutor’s application for leave to appeal and reversed the circuit court:

“In this case, the circuit court suggested that defendant, in the course of exercising professional judgment, might have concluded that the information supplied to him indicating that the victim was being abused was inaccurate or some kind of fantasy. That hardly makes the statute vague or overbroad. Defendant had reasonable suspicion of child abuse, but concluded that his suspicions were not factually founded. With respect to the defendant’s legal obligations under [the Child Protection Law], it was not for him to make this determination, but for the responsible investigative agencies, such as the Department of Social Services [now the Family Independence Agency], to make. *While defendant is free to decide that the victim’s allegations are untrue for purposes of rendering professional treatment, he is not free to arrogate to himself the right to foreclose the possibility of a legal investigation by the state.*” *Id.*, at 715 (emphasis added).

Thus, it appears that the standard is objective — whether a reasonable person would suspect abuse or neglect—rather than subjective—whether the reporter actually believed that the child has been abused.

In addition, for purposes of the Child Protection Law, the following constitute “reasonable cause to suspect” that abuse or neglect of a child has occurred:

- F the pregnancy of a child less than 12 years old, and
- F the presence of venereal disease in a child between the ages of one month and 12 years.

MCL 722.623(8); MSA 25.248(3)(8).

Similarly, a mandatory reporter who knows or has reasonable cause to suspect from the infant’s symptoms that a newborn infant has any amount of alcohol, a controlled substance, or a metabolite of a controlled substance in his or her body must report to the Family Independence Agency, unless the substance is present due to treatment of the mother or newborn. MCL 722.623a; MSA 25.248(3a). See *In the Matter of Baby X*, 97 Mich App 111, 113–16 (1980), discussed in Section 2.18(C), below.

2.9 Time Requirements for Reporting Suspected Abuse or Neglect

*FIA Form 3200 may be used to comply with the requirement of a written report.

An oral report must be made immediately, and, within 72 hours of the oral report, a written report containing information listed in MCL 722.623(2); MSA 25.248(3)(2), must be filed with the Family Independence Agency. MCL 722.623(1); MSA 25.248(3)(1). The written report is then forwarded to the Family Independence Agency in the county in which the child suspected of being abused or neglected is found. MCL 722.623(4); MSA 25.248(3)(4).*

2.10 Investigation Requirements When Report Is Made to Family Independence Agency

*See Section 2.2(C), above, for a definition of this phrase.

Within 24 hours after receiving a report, the Family Independence Agency must either commence its own investigation or refer the case to the prosecuting attorney. The case must be referred to the prosecuting attorney if the FIA believes that the report has a basis in fact and the report indicates that the abuse or neglect was *not* committed by a “person responsible for the child’s health or welfare,”* or if there was a violation of any of the following offenses:

- F Criminal child abuse. MCL 750.136b; MSA 28.331(2);
- F Child sexually abusive material or activity. MCL 750.145c; MSA 28.342a; or
- F Criminal sexual conduct. MCL 750.520b–750.520g; MSA 28.788(2)–(7).

MCL 722.628(1); MSA 25.248(8)(1).

Note 1: For a concise summary of the role of law enforcement personnel in the investigation of child abuse cases, see Hammond, et al, *Law Enforcement Response to Child Abuse: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997).

If the child is not in the physical custody of the parent or legal guardian and informing the parent or legal guardian would not endanger the child’s health or welfare, the law enforcement agency or Family Independence Agency shall inform the parent or legal guardian of the investigation as soon as the

parent's or legal guardian's identity is discovered. MCL 722.628(1); MSA 25.248(8)(1).

Note 2: The Family Independence Agency *Services Manual, Children & Youth*, Item 712, p 18, states that “[c]ommencing an investigation requires contact with someone other than the referring person within 24 hours” of receipt of a complaint to assess risk and determine agency response. Contact with other community agencies that might have information, or contact with others as suggested by the complaint itself, satisfy the statutory requirement for commencement of the investigation. The *Services Manual* notes that agency intake procedures alone do not satisfy the statutory requirement.

The Family Independence Agency has an affirmative duty to investigate alleged abuse or neglect, to prevent further abuse, to safeguard and enhance the welfare of the child, and to preserve family life where possible. MCL 722.628(2); MSA 25.248(8)(2).

The Court of Appeals has held that child protective caseworkers not acting at the behest of police are not required to give Miranda warnings prior to speaking with a person during an investigation of suspected abuse or neglect. *People v Porterfield*, 166 Mich App 562, 566–67 (1988).

Of course, a search warrant may be obtained according to law in a criminal investigation. In *People v Wood*, 447 Mich 80, 84–85 (1994), the Michigan Supreme Court held that the social worker-client privilege was not violated where the defendant's daughter told the social worker that her parents were selling and using drugs in the home, and where the social worker subsequently acted as affiant for a search warrant for the home.

2.11 Investigation Requirements When Report Is Made to a Law Enforcement Agency

Within 24 hours after receiving a report, a local law enforcement agency must commence its own investigation or refer the report to the Family Independence Agency. The law enforcement agency must conduct its own investigation (rather than referring the report to the FIA) if the abuse or neglect was *not* committed by a “person responsible for the child's health or welfare,”* or that there was a violation of any of the following offenses:

- F Criminal child abuse. MCL 750.136b; MSA 28.331(2);
- F Child sexually abusive material or activity. MCL 750.145c; MSA 28.342a; or
- F Criminal sexual conduct. MCL 750.520b–750.520g; MSA 28.788(2)–(7).

MCL 722.628(1); MSA 25.248(8)(1).

If the child is not in the physical custody of the parent or legal guardian and informing the parent or legal guardian would not endanger the child's health

*See Section 2.2(C), above, for a definition of this term.

or welfare, the law enforcement agency or Family Independence Agency shall inform the parent or legal guardian of the investigation as soon as the parent's or legal guardian's identity is discovered. MCL 722.628(1); MSA 25.248(8)(1).

Note: The Child Protection Law does not preclude or hinder a hospital, school, or other institution from conducting its own investigation of a reported claim, or from taking disciplinary action against employees based on its own investigation. See MCL 722.632a; MSA 25.248(12a). Moreover, if there is reasonable cause to suspect the abuse or neglect of a child under the care or control of a public or private agency, institution, or facility, the investigation must be conducted by an agency independent of the agency, institution, or facility being investigated. If the investigation produces evidence of a violation of MCL 750.136b; MSA 28.331(2) (criminal child abuse), MCL 750.145c; MSA 28.342a (child sexually abusive material or activity), or MCL 750.520b–750.520g; MSA 28.788(2)–(7) (criminal sexual conduct), the investigating agency must notify the prosecuting attorney of the results of the investigation. MCL 722.628(7); MSA 25.248(8)(7).

2.12 Required Cooperation Between Family Independence Agency and Law Enforcement Officials

Within 24 hours of becoming aware of one or more of the following conditions, the Family Independence Agency must seek the assistance of, and cooperate with, law enforcement officials:

- (a) Abuse or neglect is the suspected cause of a child's death.
- (b) The child is the victim of suspected "sexual abuse" or "sexual exploitation."*
- (c) Abuse or neglect resulting in severe physical injury to the child requires medical treatment or hospitalization. "Severe physical injury" means brain damage, skull or bone fracture, subdural hemorrhage or hematoma, dislocation, sprains, internal injuries, poisoning, burns, scalds, severe cuts, or any other physical injury that seriously impairs the health or physical well-being of a child.
- (d) Law enforcement intervention is necessary for the protection of the child, a department employee, or another person involved in the investigation.
- (e) The alleged perpetrator of the child's injury is not a "person responsible for the child's health or welfare."*

MCL 722.628(3)(a)–(e); MSA 25.248(8)(3)(a)–(e).

The involvement of law enforcement officials in an investigation does not prevent or relieve the Family Independence Agency from proceeding with its investigation if there is reasonable cause to suspect that the abuse or neglect was committed by a person responsible for the child's health or welfare. MCL 722.628(5); MSA 25.248(8)(5).

*See Section 2.2(A), above, for definitions of these terms.

*See Section 2.2(C), above, for a definition of this term.

2.13 Required Use of Protocols

If a “central registry case” involves a child’s death, serious physical injury, or sexual abuse or exploitation, the Family Independence Agency must refer the case to the prosecuting attorney for the county in which the child is located. The prosecuting attorney must review the case to determine whether the investigation complied with the required protocol. MCL 722.628b; MSA 25.248(8b). A “central registry case” means a case that the Family Independence Agency classifies as Category I or Category II. For cases investigated before July 1, 1999, a “central registry case” means a case involving a “substantiated” allegation of abuse or neglect. See MCL 722.622(c); MSA 25.248(2)(c).*

*See Section 2.21, below, for a detailed discussion of the required classification of all allegations of child abuse and neglect.

Note: MCL 722.627b; MSA 25.248(7b), provides for the establishment of standing child fatality review teams. In addition, in each county, the prosecuting attorney and Family Independence Agency are required to develop and establish procedures for involving law enforcement in investigations. In each county, the prosecuting attorney and Family Independence Agency are required to adopt and implement a standard child abuse and neglect investigation and interview protocol using as a model the protocol developed by the governor’s task force on children’s justice as published in DSS Publication 794 (8–93). MCL 722.628(6); MSA 25.248(8)(6).

2.14 Investigation and Custody Requirements When Child Is Brought to Hospital

If a child suspected of being abused or neglected is brought to a hospital for outpatient services or admitted to a hospital and the attending physician determines that releasing the child would endanger the child’s health or welfare, the attending physician must notify his or her supervisor and the Family Independence Agency. The supervisor may detain the child in protective custody until the next regular business day of the Family Division. The Family Division must then:

- F order the child detained in the hospital;
- F order the child detained as required by MCL 712A.14; MSA 27.3178(598.14),* or
- F order the child to be released to the child’s parent, guardian, or custodian.

*See Section 4.1.

MCL 722.626(1); MSA 25.248(6)(1).

In such cases, physicians have a statutory duty to make the necessary examinations and submit a written report to the Family Independence Agency. MCL 722.626(2); MSA 25.248(6)(2). This report must be provided to the Family Independence Agency even without parental consent or release. OAG, 1978, No 5406, p 724 (December 15, 1978). If a report is made by a person other than a physician, or if the physician’s report is incomplete, the Family Independence Agency may request a court-ordered medical evaluation of the child.* If the child’s health is seriously endangered

*See Section 2.17, below.

and a court order cannot be obtained, the Family Independence Agency shall have an evaluation performed without a court order. MCL 722.626(3); MSA 25.248(6)(3).

Note: The court, a child placing agency, or the Family Independence Agency may consent to routine, nonsurgical medical care, or emergency medical and surgical treatment *if the minor is placed outside the home*. MCL 722.124a(1); MSA 25.358(24a)(1). See Section 4.7 for a discussion of the requirements for ordering medical treatment for a child.

2.15 Required Procedures for Contacting Child at School

*The FIA is not required to notify a “nonparent adult” in these cases. See Section 2.2(C), above.

A school or other institution must cooperate with the Family Independence Agency during an investigation of suspected abuse or neglect. If the FIA determines that it is necessary to complete the investigation or prevent abuse or neglect, schools and other institutions must allow access to the child without parental consent. The Family Independence Agency must notify the person responsible for the child’s welfare after contact with the child and may delay notice if it would compromise the child’s or child’s sibling’s safety or the integrity of the investigation. MCL 722.628(8); MSA 25.248(8)(8).*

A school administration may not impose conditions upon the protective services worker’s interview of the child at school. The school may not deny access to the child, require that the child protective worker establish in writing the need to interview the child, require that a school employee be present during the interview, or require parental consent before allowing access to the child. OAG, 1995, No 6869, p 92 (September 6, 1995).

*See Sections 2.18(B) (FIA access to educational records) and 2.20 (access by public to FIA’s central registry), below.

Before and after contact with the child at school, the FIA investigator must meet with a designated school staff person to review investigation procedures, formulate a course of action based on the contact with the child, and share information, within the confidentiality provisions of the Child Protection Law. MCL 722.628(9)(a)–(b); MSA 25.248(8)(9)(a)–(b).*

*See Section 2.17, below.

Unless the Family Independence Agency has obtained a court order,* a child shall not be subjected to a search at a school that requires the child to remove his or her clothing to expose his buttocks or genitalia, or her breasts, buttocks, or genitalia. MCL 722.628(10); MSA 25.248(8)(10).

2.16 Interviewing Child Out of Presence of Suspected Abuser

During the investigation of suspected abuse or neglect, the child shall not be interviewed in the presence of a suspected abuser. MCL 722.628c; MSA 25.248(8c).

Note: For a concise guide to interviewing child witnesses and victims, see Saywitz & Faller, *Interviewing Child Witnesses and Victims of Sexual Abuse: Portable Guides to Investigating Child Abuse* (Washington, DC: U.S. Department of Justice, 1997). See also the “Forensic Interviewing Protocol” developed by the Governor’s Task Force on Children’s Justice and the Family Independence Agency.

2.17 The Use of Court Orders in Investigating Suspected Abuse or Neglect

After a petition is filed initiating child protective proceedings, the court may make orders to further investigate the allegations of abuse or neglect. In exigent circumstances, such a request for court action need not be in writing but may be via telephone. MCR 5.961(A).*

*See Chapter 4.

MCL 712A.12; MSA 27.3178(598.12), and MCR 5.923(B) provide that after a petition has been filed, the court may order further investigation, including examination of the child by a physician, dentist, psychologist, or psychiatrist. MCR 5.923(A) states that “at any time the court believes that the evidence has not been fully developed,” the court may order production of further evidence and witnesses. MCR 5.923(C) gives the court the authority to order photographing of a minor who is in court custody.

Note: A petition must be filed (usually by a child protective worker) before court orders may be obtained to further investigate a case of suspected child abuse or neglect. This differs from the typical criminal investigation, in which the investigator compiles all of the evidence against the suspect, and the prosecuting attorney evaluates the evidence and decides whether or not to file a complaint. See MCL 712A.1(2); MSA 27.3178(598.1)(2) (other than designated proceedings in delinquency cases, proceedings under the Juvenile Code are not criminal proceedings).

2.18 Family Independence Agency Access to Confidential Records to Investigate Suspected Abuse or Neglect

The Family Independence Agency has an affirmative duty to investigate alleged abuse or neglect, to prevent further abuse, to safeguard and enhance the welfare of the child, and to preserve family life where possible. MCL 722.628(2); MSA 25.248(8)(2). This often requires the Family Independence Agency to examine otherwise confidential records of other agencies.

*See Section 11.4 for a discussion of the abrogation of privileges during child protective proceedings.

*See Section 2.5, above, discussing “mandatory reporters” of abuse or neglect.

*The rules governing access to medical records and information under this section do not govern release of records under MCL 333.5131; MSA 14.15(5131) (records of testing for AIDS and other infectious diseases). MCL 333.2640(5); MSA 14.15(2640)(5).

In child protective proceedings, any legally recognized privileged communication except that between attorney and client is abrogated and shall neither constitute grounds for excusing a report otherwise required to be made nor for excluding evidence in a civil child protective proceeding resulting from a report made under the Child Protection Law. MCL 722.631; MSA 25.248(11).*

A. Medical Records

Physicians have a statutory duty to make the necessary examinations and submit a written report to the Family Independence Agency. MCL 722.626(2); MSA 25.248(6)(2). This report must be provided to the Family Independence Agency even without parental consent or release. OAG, 1978, No 5406, p 724 (December 15, 1978). In addition to this duty and the duty to report suspected child abuse or neglect under MCL 722.623(1); MSA 25.248(3)(1),* physicians and other health care providers, and the Department of Public Health, may have a duty to release certain information to the FIA. See MCL 333.16281(5); MSA __.__.

Note: The provisions described below allowing access by Child Protective Services workers to records or information of the Department of Public Health, Community Mental Health, health-care providers, psychologists, and counselors are effective March 1, 1999. See 1998 PA 496 and 497.

The Family Independence Agency may obtain access to otherwise confidential records of the Michigan Department of Public Health. If there is a compelling need for medical records or information to determine whether child abuse or neglect has occurred or to take action to protect a child where there may be a substantial risk of harm, the Department of Public Health must provide access to the child’s medical records and information pertinent to an investigation. This access must be given to an FIA caseworker or administrator directly involved in the investigation. Records or information disclosed must include the identity of the individual to whom the record or information pertains. MCL 333.2640(2); MSA 14.15(2640)(2). Consent to release of records or information is not required. MCL 333.2640(3); MSA 14.15(2640)(3).*

The Department of Public Health must provide access to pertinent records or information within 14 days of the receipt of a written request from an FIA caseworker or administrator directly involved in the investigation. MCL 333.2640(3); MSA 14.15(2640)(3).

In addition, the Family Independence Agency may obtain access to the records of a licensee or registrant of the Michigan Department of Public Health. If there is a compelling need for medical records or information to determine whether child abuse or neglect has occurred or to take action to protect a child where there may be a substantial risk of harm, an FIA caseworker or administrator directly involved in the investigation must request in writing records and information pertinent to the investigation. The licensee or registrant must release pertinent records or information, if any, within 14 days of the request. MCL 333.16281(1); MSA __.__. See

also MCL 333.16648(1) and (2)(h); MSA 14.15(16648)(1) and (2)(h) (disclosure requirements apply to dentists), MCL 333.18117; MSA 14.15(18117) (disclosure requirements apply to licensed professional counselors and limited licensed counselors), MCL 333.18237; MSA 14.15(18237) (disclosure requirements apply to psychologists), and MCL 330.1748a; MSA 14.800(748a) (disclosure requirements apply to mental health professionals).

The following privileges* do not apply to medical records or information released or made available by a licensee or registrant:

- F the physician-patient privilege;
- F the dentist-patient privilege;
- F the licensed professional counselor-client privilege, and the limited licensed counselor-patient privilege;
- F the psychologist-patient privilege; and
- F any other health professional-patient privilege created or recognized by law.

MCL 333.16281(2)(a)–(e); MSA ____.

*See Section 11.4 for a discussion of the abrogation of evidentiary privileges in child protective proceedings.

B. School Records

The Family Educational and Privacy Rights Act, 20 USC 1232g et seq., governs the release of school records to a child's parent or third parties. A student's parents are entitled to access to their child's education records. 20 USC 1232g(a)(1)(A). For release of records to third parties, the parent's consent is required unless one of several exceptions is met. 20 USC 1232g(b)(1). Records may also be released pursuant to a court order or subpoena if parents and students are notified in advance of the release. 20 USC 1232g(b)(2)(B). See also MCL 600.2165; MSA 27A.2165, which prohibits school employees from disclosing records or confidences without the consent of a parent or legal guardian if the child is under 18 years of age.

C. Records of Drug Counseling

Records of the identity, diagnosis, prognosis, or treatment of any patient in any federal or state drug or alcohol abuse prevention program are confidential. 42 USC 290dd—3(a) and 290ee—3(a), and MCL 333.6111; MSA 14.15(6111). Disclosure is permissible with the consent of the patient or pursuant to a court order and subpoena. 42 USC 290dd—3(b) and 290ee—3(b), and MCL 333.6112 and 333.6113; MSA 14.15(6112) and 14.15(6113). For the required contents of the consent form, see 42 CFR 2.31 and Form MC 315 (Authorization for Release of Medical Information).

A court order is required to initiate or substantiate criminal charges against a patient or to conduct any investigation of the patient. 42 USC 290dd—3(c) and 290ee—3(c), and MCL 333.6113(c); MSA 14.15(6113)(c). A

court order may also authorize disclosure of confidential communications made by a patient if disclosure is necessary to protect against an existing threat to life, a threat of serious bodily injury, including circumstances that constitute suspected child abuse or neglect and verbal threats against third parties, or if disclosure is necessary to investigate or prosecute criminal child abuse or neglect. 42 CFR 2.63(a)(1)–(2).

In *In the Matter of Baby X*, 97 Mich App 111 (1980), within 24 hours of its birth, the baby began to show signs of drug withdrawal. On appeal, the baby’s mother argued that a conflict exists between the federal law mandating confidentiality of drug or alcohol treatment records and state law mandating disclosure of suspected child abuse or neglect. The Court of Appeals, citing two New York cases, *In the Matter of Dwayne G*, 97 Misc 2d 333 (1978), and *In the Matter of the Doe Children*, 93 Misc 2d 479 (1978), held that where treatment records are necessary and material to the state’s proof of neglect, a court of competent jurisdiction may authorize disclosure of the confidential information. *In the Matter of Baby X*, *supra*, at 120–21. The Court also noted that “any conflict between Federal and state law can be avoided by filing a John or Jane Doe petition with the disclosure of any names and confidential information to follow the issuance of a court order upon ‘good cause.’” *Id.*, at 121.

D. Mental Health Records

Information in the records of a recipient of mental health services is confidential and may only be disclosed pursuant to MCL 330.1748; MSA 14.800(748), or MCL 330.1748a; MSA 14.800(748a). MCL 330.1748(1); MSA 14.800(748)(1). Confidential information may be disclosed when necessary to comply with another provision of law (such as the duty to report suspected child abuse or neglect) or pursuant to court order. MCL 330.1748(5)(a) and (d); MSA 14.800(748)(5)(a) and (d). See OAG, 1998, No 6976 (March 26, 1998) (child protective services workers are entitled to access to community mental health records of the involved children and relevant records of other recipients of community mental health services).

Under MCL 330.1748a; MSA 14.800(748a), mental health professionals have the same duties as other health care providers to release pertinent records or information to a Family Independence Agency caseworker or administrator directly involved in an investigation of suspected abuse or neglect.*

*See Section 2.18(A), above, for a discussion of these duties.

E. Friend of the Court Records

Child Protective Services personnel must be given access to Friend of the Court records related to the investigation of alleged child abuse and neglect. MCR 3.218(C).

F. Access to Information on LEIN

A state or county employee engaged in the enforcement of the child protection laws or rules of this state must be ensured access to information

on the Law Enforcement Information Network concerning an individual being investigated. MCL 28.214(1)(a)(ii); MSA 4.448(54)(1)(a)(ii).

2.19 Family Independence Agency Registry of Reports of Abuse and Neglect

The Family Independence Agency is required to maintain a statewide electronic registry to carry out the purposes of the Child Protection Law. MCL 722.627(1); MSA 25.248(7)(1). See also MCL 722.622(b); MSA 25.248(2)(b) (central registry contains reports filed under the Child Protection Law in which relevant and accurate evidence of abuse or neglect is found), MCL 722.622(c); MSA 25.248(2)(c) (“central registry case” means a case classified under Category I or II), and MCL 722.622(h); MSA 25.248(2)(h) (Child Protective Service Information System (“CPSI”), the internal records system of the FIA, is not subject to the rules governing the central registry).

If it classifies a report of suspected abuse or neglect as a “central registry case,” the Family Independence Agency must maintain a record in the central registry. Within 30 days after the classification, the Family Independence Agency must notify in writing each individual who is named in the record as a perpetrator of the abuse or neglect. This notice must state that information in the record may be released under MCL 722.627d; MSA 25.248(7d).^{*} MCL 722.627(4); MSA 25.248(7)(4).

If the investigation of a report fails to disclose evidence of abuse or neglect, information identifying the subject of the report must be expunged from the central registry. If evidence of abuse or neglect exists, the FIA must maintain the information in the central registry until it receives reliable information that the alleged perpetrator of the abuse or neglect is dead. MCL 722.627(7); MSA 25.248(7)(7).^{*}

A person who is the subject of a report or record may request that the Family Independence Agency amend an inaccurate report or record from the central registry and local office file, or expunge from the central registry a report or record in which no relevant and accurate evidence of abuse or neglect is found to exist. MCL 722.627(5); MSA 25.248(7)(5). “Relevant evidence” is defined as evidence having a tendency to make the existence of a fact that is at issue more probable than it would be without the evidence. MCL 722.622(p); MSA 25.248(2)(p). Reports or records filed in a local office are subject to expunction only as authorized by the Family Independence Agency, when considered in the best interest of the child. MCL 722.627(5); MSA 25.248(7)(5).

If the Family Independence Agency refuses the request for expunction or amendment or fails to act within 30 days of the request, the agency must hold a hearing on the issue, at which the standard of proof is a preponderance of the evidence. MCL 722.627(6); MSA 25.248(7)(6).

^{*}See MCL 722.627c–i; MSA 25.248(7c)–(7i), for rules governing the release of “specified information.”

^{*}The provision requiring maintenance of records until the alleged perpetrator’s death is effective August 1, 1999. See 1998 PA 485.

2.20 Access by Public to Family Independence Agency's Registry

*See MCL 722.627c–i; MSA 25.248(7c)–(7i), for rules governing the release of “specified information.”

Unless made public as “specified information” released under MCL 722.627d; MSA 25.248(7d),* a written report, document, or photograph filed with the Family Independence Agency is confidential and is available only to one or more of the following:

- (a) a legally mandated public or private child protective agency investigating a report of known or suspected child abuse or neglect;
- (b) a police or other law enforcement agency investigating a report of known or suspected child abuse or neglect;
- (c) a physician who is treating a child whom the physician reasonably suspects may be abused or neglected;
- (d) a person legally authorized to place a child in protective custody if the confidential record is necessary to determine whether to place the child in protective custody;
- (e) a person, agency, or organization, including a multidisciplinary case consultation team, authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record under the Child Protection Law, or who is responsible for the child’s health or welfare;*
- (f) a person named in the report or record as a perpetrator or alleged perpetrator of the child abuse or neglect or a victim who is an adult at the time of the request, if the identity of the person who made the report is protected as provided in MCL 722.625; MSA 25.248(5);
- (g) a court that determines the information is necessary to decide an issue before it;
- (h) a grand jury that determines that the information is necessary in the conduct of the grand jury’s official business;
- (i) subject to several conditions, a person, agency, or organization engaged in a bona fide research or evaluation project;
- (j) a person appointed as lawyer-guardian ad litem or other attorney as provided by MCL 722.630; MSA 25.248(10);
- (k) a child placing agency licensed under MCL 722.111 to 722.128; MSA 28.358(11) to 28.358(28), for the purpose of investigating an applicant for adoption, a foster care applicant or licensee or an employee of a foster care applicant or licensee, an adult member of an applicant’s or licensee’s household, or other persons in a foster care or adoptive home who are directly responsible for the care and welfare of children, to determine suitability of a home for adoption or foster care. The child placing agency shall disclose the information to a foster care applicant or licensee, or to an applicant for adoption;

*This provision does not apply to “nonparent adults.” See Section 2.2(C), above.

(l) Family Division staff authorized by the court to investigate foster care applicants and licensees, employees of foster care applicants and licensees, adult members of the applicant's or licensee's household, and other persons in the home who are directly responsible for the care and welfare of children, for the purpose of determining the suitability of the home for foster care. The court shall disclose this information to the applicant or licensee;

(m) subject to MCL 722.627a; MSA 25.248(7a), a standing or select committee or appropriations subcommittee of either house of the legislature having jurisdiction over protective services matters for children;

(n) the Children's Ombudsman;

(o) a child fatality review team; and

(p) a county medical examiner or deputy county medical examiner.

MCL 722.627(2)(a)–(p); MSA 25.248(7)(2)(a)–(p).

Persons or entities listed above to whom information is disclosed shall make the information available only to other persons or entities listed above. MCL 722.627(3); MSA 25.248(7)(3). See MCL 722.633(3); MSA 25.248(13)(3) (criminal penalties for violations of confidentiality provisions of Child Protection Law), and *Zimmerman v Owens*, 221 Mich App 259 (1997) (attorney in divorce proceeding could not be held civilly liable for attaching protective services report to a motion in the divorce case, as MCL 722.627(2)(g); MSA 25.248(7)(2)(g), allows disclosure where court determines that the information is necessary to decide an issue before it).

The Family Independence Agency shall not include a police report related to an investigation of suspected child abuse or neglect when releasing information to authorized persons or entities. The agency may, however, include a person's convictions of crimes related to child abuse or neglect when releasing such information. MCL 722.627(8); MSA 25.248(7)(8).

2.21 Required Response by the Family Independence Agency Following Investigation*

After completing its investigation and based on the results of that investigation, the Family Independence Agency must determine in which category below to classify the allegations of abuse or neglect. MCL 722.628(11); MSA 25.248(8)(11).

The categories, and the required FIA response, are as follows:

(a) Category V—**services not needed**. The department determines that the allegation does not amount to child abuse or neglect, and the structured decision-making tool indicates that there is no future risk of harm to the

*These new requirements take effect on July 1, 1999. See 1998 PA 484.

child. [The Child Protection Law] does not require a further response by the department.

(b) Category IV—**community services recommended**. The department determines that there is not evidence of child abuse or neglect, but the structured decision-making tool indicates a low or moderate risk of future harm to the child. The department shall assist the child’s family in voluntarily participating in community-based services.

(c) Category III—**community services needed**. The department determines that there is evidence of child abuse or neglect, and the structured decision-making tool indicates a low or moderate risk of future harm to the child. The department shall assist the child’s family in receiving community-based services. If the family does not voluntarily participate in services, the department may reclassify the case as category II.

(d) Category II—**child protective services required**. The department determines that there is evidence of child abuse or neglect, and the structured decision-making tool indicates a high or intensive risk of future harm to the child. The department shall open a protective services case and provide the services necessary under [The Child Protection Law]. The department shall also list the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry, either by name or as “unknown” if the perpetrator has not been identified.

(e) Category I—**court petition required**. The department determines that there is evidence of child abuse or neglect and one or more of the following are true:

(i) A court petition is required under another provision of [The Child Protection Law].*

(ii) The child is not safe and a petition for removal is needed.*

(iii) The department previously classified the case as category II and the child’s family does not voluntarily participate in services.

(iv) There is a violation, involving the child, of a crime listed or described in [MCL 722.628a(1)(b), (c), (d), or (f); MSA 25.248(8a)(1)(b), (c), (d), or (f)], or of child abuse in the first or second degree as prescribed by [MCL 750.136b; MSA 28.331(2)].*

MCL 722.628d(1)(a)–(e); MSA 25.248(8d)(1)(a)–(e) (emphasis added).

If the case is classified under Category I, the FIA must do all of the following:

*See Sections 2.24–2.25, below, and Section 16.23.

*See Section 4.2.

*See Section 2.23, below, for a discussion of the prosecutor’s right to bring both child protection and criminal charges.

(a) If a court petition is not required under another provision of [the Child Protection Law], submit a petition for authorization by the court under [MCL 712A.2(b); MSA 27.3178(598.2)(b)].*

(b) Open a protective services case and provide the services necessary under [the Child Protection Law].

(c) List the perpetrator of the child abuse or neglect, based on the report that was the subject of the field investigation, on the central registry, either by name or as “unknown” if the perpetrator has not been identified.

MCL 722.628d(2)(a)–(c); MSA 25.248(8d)(2)(a)–(c).

Note: Prior to a 1999 amendment to the Child Protection Law, following an investigation by the FIA, a case was either “substantiated” if a preponderance of the evidence supported the allegation of abuse or neglect, or “unsubstantiated.” “Substantiated” now means a case classified as a “central registry case.” MCL 722.622(u); MSA 25.248(2)(u). A “central registry case,” in turn, is now defined as a case classified under Category I or II, or, for cases investigated before July 1, 1999, a case in which the allegations were “substantiated” by a preponderance of the evidence. MCL 722.622(c); MSA 25.248(2)(c).

*See Section 2.22, below, and Chapters 3 (jurisdiction) and 6 (petitions).

Part III — Petition Requirements

2.22 Who May File a Petition Seeking Court Jurisdiction

MCL 712A.11(1); MSA 27.3178(598.11)(1), allows “a person” to give to a court information concerning a child, and the court may then take appropriate action concerning the child. Typically, either a child protective worker or a prosecuting attorney acting on behalf of the Family Independence Agency drafts and files a petition seeking court jurisdiction over a child suspected of being abused or neglected. However, school officials may file petitions alleging “educational neglect” under MCL 712A.2(b)(1); MSA 27.3178(598.2)(b)(1). The Children’s Ombudsman, guardians, custodians, and foster parents (as “concerned persons”) may file petitions seeking termination of parental rights. If this occurs, the court may refer the matter to the Family Independence Agency for investigation. See MCR 5.962(B).*

*See also Section 18.4 for a list of persons who have standing to request termination of parental rights.

Note: The Children’s Ombudsman may file a petition on behalf of a child requesting the Family Division to assume jurisdiction over the child pursuant to MCL 712A.2(b); MSA 27.3178(598.2)(b), or a petition seeking to terminate parental rights under MCL 712A.19b; MSA 27.3178(598.19b), if the ombudsman is satisfied that a complainant has contacted the Family Independence Agency, the prosecuting attorney, the child’s attorney, and the child’s guardian ad litem, if any, and that none of these persons intends to file a petition. MCL 722.927(5); MSA 27.3178(557.7)(5). See MCL 722.922(f); MSA 27.3178(557.2)(f) (definition of “complainant”), MCL 722.923; MSA 27.3178(557.3) (description of Children’s Ombudsman).

2.23 Prosecutor’s Right to Bring Both Child Protection and Criminal Charges Against Parents

*See Sections 12.1 (purpose of trial in child protective proceeding) and 10.10 (accepting pleas of no contest in protective proceedings).

A jury verdict of “no jurisdiction”^{*} in a child protective proceeding does not bar, on collateral estoppel grounds, a subsequent criminal prosecution, since a jury could find that the child was not within the jurisdiction of the court even though it may have also found that a criminal offense occurred. *People v Gates*, 434 Mich 146, 159–60 (1990). In *Gates*, the Michigan Supreme Court stated that the jury may have concluded that although the defendant was guilty of criminal sexual conduct involving his child, that conduct did not render the child’s home environment unfit under MCL 712A.2(b)(2). Thus, the prosecutor need not elect between filing a petition for Family Division jurisdiction in protective proceedings and initiating criminal proceedings. *Id.*, at 163.

In *In re Stricklin*, 148 Mich App 659, 663–66 (1986), the Court found no violation of the parents’ privilege against compelled self-incrimination under US Const, Am V, and Const 1963, art 1, §17. The trial court denied the parents’ motion to adjourn the child protective proceeding pending the outcome of criminal proceedings against them based on the same conduct. The parents were eventually convicted of the criminal charges. The Court of Appeals held that the purported increased risk of loss of parental rights by refusing to testify during the protective proceeding did not amount to compulsion prohibited by the state and federal constitutions. The parents’ asserted increased risk of loss of their parental rights implied that they would present nonincriminating testimony during the protective proceedings, and the parents’ choice not to give nonincriminating testimony was a matter of trial strategy, not a constitutional violation.

2.24 Time Requirements for Filing a Petition in Cases Involving Severe Physical Injury or Sexual Abuse

Within 24 hours after the Family Independence Agency determines that a child was severely physically injured or sexually abused,* the agency must file a petition seeking Family Division jurisdiction under MCL 712A.2(b); MSA 27.3178(598.2)(b). MCL 722.637; MSA 25.248(17).

*See Sections 2.2(A) and 2.12, above, for definitions of “severe physical injury” and “sexual abuse.”

2.25 Required Request for Termination of Parental Rights at Initial Dispositional Hearing

The Family Independence Agency must file a petition seeking Family Division jurisdiction of the child under MCL 712A.2(b); MSA 27.3178(598.2)(b), if any of the following circumstances exist:

(a) The Family Independence Agency determines that a parent, guardian, or custodian, or a person who is 18 years of age or older and who resides for any length of time in the child’s home, has abused the child or a sibling and the abuse included one or more of the following:

- (i) abandonment of a young child;
- (ii) criminal sexual conduct involving penetration, attempted penetration, or assault with intent to penetrate;
- (iii) battering, torture, or other severe physical abuse;
- (iv) loss or serious impairment of an organ or limb;
- (v) life threatening injury; or
- (vi) murder or attempted murder.

(b) The Family Independence Agency determines that there is a risk of harm to the child and either of the following is true:

- (i) The parent’s rights to another child were terminated as a result of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state.
- (ii) The parent’s rights to another child were voluntarily terminated following the initiation of proceedings under MCL 712A.2(b); MSA 27.3178(598.2)(b), or a similar law of another state.

MCL 722.638(1)(a)–(b); MSA 25.248(18)(1)(a)–(b).

*See Chapter 18 for a complete discussion of hearings to terminate parental rights.

In a mandatory petition filed under MCL 722.638(1)(a)–(b); MSA 25.248(18)(1)(a)–(b), if a parent is a suspected perpetrator of the abuse or is suspected of placing the child at an unreasonable risk of harm due to the parent’s failure to take reasonable steps to intervene to eliminate that risk, the Family Independence Agency must include in the mandatory petition a request for termination of parental rights at the initial dispositional hearing. MCL 722.638(2); MSA 25.248(18)(2).*

Note: MCL 722.638; MSA 25.248(18), was amended in 1998 to clarify when the Family Independence Agency is required to file a petition, and when that petition must contain a request for termination of parental rights. See 1998 PA 428, repealing 1998 PA 383. The amended provision, quoted above, is effective March 23, 1999. Under the provision in effect prior to March 23, 1999, the FIA was not required to determine, before filing a petition for court jurisdiction, that there was risk of harm to the child of a parent who had previously had his or her parental rights to another child terminated, and there was no requirement that the parent be the perpetrator or suspected of placing the child at an unreasonable risk of harm before the FIA was required to request termination of parental rights at the initial dispositional hearing.

2.26 Required Conference to Decide Whether to Request Termination of Parental Rights at Initial Dispositional Hearing

*See Section 2.25, above.

If the Family Independence Agency is considering a request to terminate parental rights at the initial dispositional hearing, in cases where the agency is not required to request termination under MCL 722.638(1)(a)–(b); MSA 25.248(18)(1)(a)–(b), and MCL 722.638(2); MSA 25.248(18)(2),* the agency must hold a conference among appropriate agency personnel to decide on a course of action. The agency must notify the attorney representing the child of the time and place of the conference, and the child’s attorney may attend the conference. MCL 722.638(3); MSA 25.248(18)(3).

If an agreement is not reached at the conference, the agency director or a designee must resolve the disagreement after consulting with attorneys for the agency and the child. MCL 722.638(3); MSA 25.248(18)(3).

2.27 Appointment of Lawyer-Guardian Ad Litem Under the Child Protection Law*

In each case filed under the Child Protection Law in which judicial proceedings are necessary,* the court must appoint a lawyer-guardian ad litem to represent the child. A lawyer-guardian ad litem represents the child and has powers and duties in relation to that representation as set forth in MCL 712A.17d; MSA 27.3178(598.17d). All provisions of MCL 712A.17d; MSA 27.3178(598.17d), apply to a lawyer-guardian ad litem appointed under the Child Protection Law. MCL 722.630; MSA 25.248(10). See also MCL 722.622(a); MSA 25.248(2)(a) (definition of “attorney” is contained in MCL 712A.13a; MSA 27.3178(598.13a), and MCL 722.622(l); MSA 25.248(2)(l) (definition of “lawyer-guardian ad litem”).

Note that the lawyer-guardian ad litem or attorney representing the child has access to the reports of suspected abuse or neglect under MCL 722.627(1)(j); MSA 25.248(7)(1)(j), and to medical records without parental consent. OAG 1979, No 5446, p 59 (February 23, 1979).

The child’s lawyer-guardian ad litem has a duty to determine the facts of the case by conducting an independent investigation including, but not limited to, interviewing the child, social workers, family members, and others as necessary, and reviewing relevant reports and other information. MCL 712A.17d(1)(c); MSA 27.3178(598.17d)(1)(c).

Note: The provision for appointment of a lawyer-guardian ad litem under the Child Protection Law is effective March 1, 1999. See 1998 PA 483. See also 1998 PA 480–482 (appointment of lawyer-guardians ad litem in child protective, guardianship, and child custody proceedings), which are also effective March 1, 1999.

*See Sections 7.10–7.12.

*See Section 2.21, above, for a discussion of required responses by the FIA following an investigation of suspected abuse or neglect.

